IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9030 of 1999
with
SPECIAL CIVIL APPLICATION NO. 9126 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEEPAK HATHEESING

Versus

UNION OF INDIA

Appearance:
MR RJ OZA for Petitioners
MR MUKESH R SHAH for Respondent No. 1
MR. K.T. DAVE, AGP, for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/07/2000

ORAL JUDGEMENT

These two petitions are filed by Ex-Directors of Aruna Mills Ltd. which is now in liquidation. The petitioners have challenged the order in original dated

7.9.1999 (Annexure-A) to the petition. The order is passed by the Deputy Director General of Foreign Trade at Ahmedabad imposing fiscal penalty of Rs. 19,06,460/- under Section 13 of the Foreign Trade (Development & Regulation) Act, 1992 for violation of condition of licence under clause 8(1)((G) of the Import (Control) Order, 1955. The fiscal penalty is imposed on M/s. Aruna Mills Ltd. and seven of its directors including the four petitioners herein.

Mr. Oza, learned counsel for the petitioners states that M/s. Aruna Mills Ltd., Ahmedabad, is already ordered to be wound up as per the judgement and order dated 5.7.1999 of this Court in Company Petition No. 92 of 1993. Various contentions are raised. However, it is not necessary to refer to all those contentions as the petitions are required to be disposed of on the grouund that the petitioners against whom the imugned order has been passed were not given any show cause notice but the show cause notice dated 25.5.1999 was issued to M/s. Aruna Mills Ltd., Ahmedabad, which had already gone into liquidation long prior thereto.

Mr. M.R. Shah, learned counsel for the respondents has urged that the petitioners have an alternative remedy available to them inasmuch as they can prefer appeal before the Additional Director General of Foreign Trade under Section 15 of the aforesaid Act.

In Rejoinder Mr. Oza submits that when the petitioners have not been given show cause notice, no useful purpose would be served by requiring the petitioners to prefer appeal.

Having heard learned counsel for the parties, it appears to the Court that since the impugned order of penalty has been passed not only against the Company which had gone into liquidation in the year 1993 but also against its directors four of whom have filed the present petition, the impugned orders deserve to be set aside qua the petitioners herein only on the ground that the four petitioners were not given any show cause notice.

Accordingly, these petitions are allowed. The impugned order dated 7.2.1999 is quashed and set aside only on the ground that the four petitioners were not given any show cause notice. The respondent is therefore at liberty to issue show cause notice to the petitioners and to pass appropriate orders in accordance with law after giving the petitioners an opportunity of being heard. It will be open for the petitioners to raise all

contentions available to them under law at the time of hearing.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. SHAH, J)

(pkn)